

**Letter of Findings Number: 09-0335
Individual Income Tax
For the Year 2007**

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ISSUE

I. Individual Income Tax – Imposition.

Authority: IC § 6-3-3-12; IC § 6-8.1-5-1.

Taxpayer protests the assessment of individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual. Prior to December 27, 2007, Taxpayer had not established an account with the Indiana College Choice 529 Plan ("529 Plan"). Taxpayer mailed his account registration and contributed a \$5,000 check to the 529 Plan Administrator. However, the 529 Plan Administrator did not post the checks until early 2008.

On Taxpayer's 2007 individual income tax return, Taxpayer claimed a \$1,000 credit based on the above-referenced contribution. The Indiana Department of Revenue ("Department") disallowed the credit and assessed additional tax that would have been due absent the credit. Taxpayer protested the assessment, the Department conducted an administrative hearing, and this Letter of Findings results.

I. Individual Income Tax – Imposition

DISCUSSION

Taxpayer protests the disallowance of the credit for contribution to the 529 Plan. In particular, Taxpayer argues that he made the payment during 2007; therefore, Taxpayer concludes that he relinquished his rights to the funds in 2007 and was eligible for the credit.

Under IC § 6-8.1-5-1(c), a taxpayer against whom a proposed assessment has been issued bears the burden of demonstrating that a proposed assessment is incorrect. Thus, Taxpayer must demonstrate that the contribution was made in calendar year 2007.

IC § 6-3-3-12(i) states:

A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for a taxable year equal to the least of the following:

- (1) Twenty percent (20 [percent]) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by [IC 6-3-1](#) through [IC 6-3-7](#).

Taxpayer has provided sufficient information to conclude that his contribution was in fact made to an account in calendar year 2007, and therefore Taxpayer was eligible for the credit that he claimed for tax year 2007.

FINDING

Taxpayer's protest is sustained.

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